

MONTANA LEGISLATIVE HISTORY

Chapter 11 1979

Bill H _____ S 4 Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 1-18 _____ c

1-19 _____ c

1-22 _____ c

_____ c

Date Out 1-24 _____ c

S. Committee on Judiciary

Hearing Date(s) 1-8 _____ c

BEST COPY
AVAILABLE

_____ c

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DATE OUT 1-8

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

COMMITTEE ON JUDICIARY - SENATE

<u>Senate & House BILL NO.</u>	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
1. SB - 1	1/3/79	1/5/79	1/5/79			1/5/79			
2. SB - 4	1/4/79	1/8/79	1/8/79			1/8/79			
3. SB - 25	1/4/79	1/8/79	1/8/79			1/8/79			
4. SB - 37	1/4/79	1/9/79	Tabled 2/2/79						
5. SB - 54	1/4/79	1/8/79	2/2/79			2/2/79			
6. SB - 65	1/4/79	1/22/79	2/6/79			2/1/79			
7. SB - 33	1/5/79	1/6/79	1/12/79			1/12/79			
8. SB - 41	1/5/79	1/6/79	1/11/79 1/6/79			1/6/79			
9. SB - 51	1/5/79	1/10/79	1/12/79		1/12/79				
10. SB - 56	1/5/79	1/10/79	1/12/79			1/12/79			
11. SB - 63	1/5/79	1/10/79	1/11/79	1/11/79					
12. SB - 69	1/5/79		Transferred 1/8/79						
13. SB - 77		Tabled	Tabled						
14. SB - 78	1/9/79	1/15/79	1/15/79			1/15/79			
15. SB - 41	1/9/79	1/11/79	1/11/79			1/11/79			
16. SB - 88	1/11/79	1/16/79	1/16/79			1/16/79			

SENATE BILL NO. 4

INTRODUCED BY _____

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MORTGAGES, PLEDGES, AND LIENS; AMENDING SECTIONS 71-1-213, 71-1-229, 71-3-401, 71-3-1003, AND 71-3-1201, MCA; AND REPEALING SECTIONS 16-2101 THROUGH 16-2104, 45-1112, 45-1113, 52-111, AND 52-213, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-213, MCA, is amended to read:

"71-1-213. Discharge or release by other than mortgagee. (1) ~~When such~~ If the discharge or release is made by the personal representative of the mortgagee, it ~~shall~~ must be accompanied by a certified copy of his authority unless such authority is already of record in the office of the county clerk and recorder where ~~such the~~ mortgage is recorded.

(2) ~~In case such~~ If the discharge or release is made by an assignee, it must be accompanied by the assignment of ~~such the~~ mortgage, unless ~~such the~~ assignment is already of record in the office of the county clerk and recorder where ~~such the~~ mortgage is recorded.

(3) ~~In the event that such~~ If the discharge or release

is executed by an attorney in fact, ~~such the~~ discharge or release ~~shall~~ must have attached to it the power of attorney under which it is made, unless ~~such the~~ power of attorney is already of record in the office of the county clerk and recorder where ~~such the~~ mortgage is recorded.

(4) ~~When such~~ If the discharge or release is executed by the heir or heirs of the mortgagee, ~~such the~~ discharge or release must be accompanied by a certified copy of an order or decree of the a court of competent jurisdiction showing such authority, unless ~~such the~~ order or decree is already of record in the office of the county clerk and recorder where ~~such the~~ mortgage is recorded.

(5) Foreign administrators and executors may satisfy mortgages of record in Montana ~~provided that~~ if the satisfaction of mortgages ~~be~~ is accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be presented and recorded ~~in connection with the satisfaction of the mortgage. When so presented and recorded, they shall have the satisfaction has~~ the same force and effect as if the mortgage was satisfied by the mortgagee ~~mortgagor.~~"

Section 2. Section 71-1-229, MCA, is amended to read:

1 "71-4-229. Possession of lands prior to foreclosure
 2 upon default and during period of redemption. The purchaser
 3 of lands at mortgage foreclosure is not entitled to the
 4 possession thereof as against the ~~execution mortgage~~ debtor
 5 during the period of redemption allowed by law while ~~said~~
 6 ~~execution the mortgage~~ debtor personally occupies the land
 7 as a home for himself and his family. It ~~shall be~~ is
 8 unlawful to insert in any mortgage of real estate any
 9 provision ~~or language~~ intended to constitute a waiver by the
 10 owner of real estate personally occupying land as a home for
 11 himself and family of the provision of this section or any
 12 provision ~~or language~~ intended to give the mortgagee
 13 possession of the land or premises prior to foreclosure upon
 14 default of tax, principal, or interest payments. The
 15 intention hereof being is to insure to such owner the
 16 possession of his land prior to foreclosure and during the
 17 year of redemption."

18 Section 3. Section 71-3-401, MCA, is amended to read:

19 "71-3-401. Who may have lien -- priority. (1) Any
 20 person who performs services for another in the capacity of
 21 a farm or ranch laborer ~~shall have~~ has a lien on all crops
 22 of every kind grown, raised, or harvested by the person for
 23 whom the services were performed during ~~said~~ that time as
 24 security for the payment of any wages due or owing to such
 25 persons for services so performed.

1 (2) Said ~~the~~ lien ~~shall have~~ has priority over all
 2 other liens, chattel mortgages, or encumbrances except
 3 ~~however~~ feed sufficient for 3 months for 1 horse, 2 cows
 4 and their calves, 4 hogs, and 50 domestic fowls, and seed
 5 grain and threshers' liens. The wages for which a lien may
 6 be claimed ~~shall may~~ not be in excess of ~~\$100 \$1,000~~ or for
 7 a period of time exceeding 60 days next preceding the date
 8 of filing the lien. In case any such person without cause
 9 quits his employment before the expiration of the time for
 10 which he is employed, then he ~~shall is~~ not be entitled to a
 11 lien as herein provided.

12 (3) If several persons have or obtain liens under the
 13 provisions of this part against property of the same
 14 employer, they ~~shall~~ have no priority among themselves but
 15 all must be paid pro rata from the proceeds of any
 16 foreclosure sale according to the provisions of this part."

17 Section 4. Section 71-3-1003, MCA, is amended to read:

18 "71-3-1003. Lien for labor or supplies furnished for
 19 contractor. Any person, partnership, or corporation which
 20 ~~shall furnish such that furnishes~~ materials or services as a
 21 subcontractor or to a contractor or a subcontractor or any
 22 person who ~~shall perform such performs~~ labor under a
 23 subcontractor with a contractor or who, as an artisan or day
 24 laborer in the employ of such contractor or subcontractor,
 25 ~~shall perform performs~~ any such labor ~~shall have~~ has a lien

upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section shall further--extend--and--attach ~~attaches~~ to all materials and fixtures owned by such original contractor or subcontractor to--or for whom the labor is performed or ~~materials~~ materials or services furnished and used or employed or furnished to be used or employed in the drilling or operating of such oil and gas wells or in the construction of such pipeline."

Section 5. Section 71-3-1201, MCA, is amended to read:

"71-3-1201. Who may have lien. (1) ~~A~~ ~~If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a~~ ranchman, farmer, agister, herder, hotelkeeper, livery, boarding, or feed stablekeeper to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted, ~~and there is--a--contract--express--or implied--for--their--keeping--feeding--herding--pasturing--or ranching,~~ has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the ~~same~~ stock and ~~is authorized to~~ may retain possession thereof until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement,

safekeeping, or carriage thereof has a special lien thereon, dependant on possession, for the compensation, if any, which ~~that~~ is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith."

Section 6. Repealer. Sections 16-2101 through 16-2104, 45-1112, 45-1113, 52-111, and 52-213, R.C.M. 1947, are repealed.

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 8, 1979

Page 1

The third meeting of this committee was called to order by Senator Lensink in room 331 at 10:00 a.m.

ROLL CALL: All members present

WITNESSES PRESENT TO TESTIFY:

H. David Cogley - Legislative Council - SB 4 & SB 25
Joan Mayer - Legislative Council - SB 4, SB 25, SB 54
Mike McGrath - Attorney General - SB 54
Brian Okerlund - University of Montana - SB 54
Carol Kirkland - Montana Petroleum Assn. - SB 54, SB 25
Dick Disney - Business Regulation - SB 54
Daniel Hougou - Business Regulation - SB 54

CONSIDERATION OF SENATE BILL 54:

Senator Towe briefly explained the bill, which would allow for the use of restraining orders in enforcement of Montana Unfair Trade Practices.

David Cogley from the Legislative Council testified as to a case that was filed in Beaverhead County. Senator Turnage questioned the wording on the bill and Senator Towe made a motion to amend the bill on page 2, line 1, after the word "a" insert the word "temporary". The motion was carried unanimously.

Senator Brown raised some questions concerning the bill. Mr. Mike McGrath from the Attorney General's office explained that they supported the bill but that there was another bill that was to come to this committee that would clarify temporary restraining orders from temporary and permanent injunctions. Senator Towe suggested that we hold this bill until we get the other bill in this committee. There were no opponents present in regard to this bill.

CONSIDERATION OF SENATE BILL 4:

Senator Galt, sponsor of this bill, gave an explanation of the bill which generally revises and clarifies the laws in regard to mortgages, pledges and liens. He introduced Dave Cogley from the Legislative Council, who perused the bill section by section. Senator Towe questioned a change in the bill on page 2, line 24 and made a motion to amend the bill on this line by striking the word "mortgagor" and inserting in lieu thereof the word "mortgagee". This amendment passed unanimously.

Senator Towe also offered an amendment that on page 3, line 4 and also on line 6, the words "mortgage" be deleted and the words, "execution" be inserted in lieu thereof.

This amendment also passed unanimously.

Senator Towe also proposed an amendment on page 6, line 6, to strike "16-2101 - 2104," which passed unanimously. Senator Towe also offered the following amendment: on page 6, line 7, following "45-1113," insert "and" and strike "and 52-213,". This motion passed unanimously.

Senator Galt made a motion that Senate Bill 4 do pass as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 25:

Senator Galt introduced David Cogley from the Legislative Council who gave an explanation of this bill and went over the bill section by section. He offered an amendment to the title as follows: Title, line 6, strike "THE LAW" and insert "TITLE 16, MCA,"; strike "ALCOHOLIC BEVERAGES" and insert "ALCOHOL AND TOBACCO" and in the title, line 7, strike "AND" and following "16-6-302," insert "AND 16-10-102,". This motion passed unanimously, Senator Galt recommended that the bill pass as amended. The vote was unanimous.

RECONSIDERATION OF SENATE BILL 54:

Joan Mayer gave an explanation of the bill to clarify restraining orders. There was some discussion and Senator Towe moved that there should be a notice made to the codifier and that Ms. Mayer should reword this correction and that a vote be postponed until the committee is able to see the wording of the amendment.

Senator Brown introduced his aide, Kim Ritter.

The meeting adjourned.



SENATOR LENSINK, Chairman Judiciary
Committee

January 9, 1979

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 4

Respectfully report as follows: That Senate Bill No. 4

Be amended in the introduced bill as follows:

1. Title, line 8.
Strike: "16-2101 through 16-2104,"
2. Title, line 9.
Following: "45-1113;"
Insert: "and"
Following: "52-111,"
Strike: "and 52-213;"
3. Page 2, line 24.
Strike: "mortgagor"
Insert: "mortgagee"
4. Page 3, line 4
Strike: "mortgage"
Insert: "execution"

XXXXXX
DO PASS

(Continued)

SB 4

Page 2

Senate Judiciary Committee

5. Page 3, line 6.
Strike: "the mortgage"
Insert: "execution"
6. Page 6, line 5.
Strike: "16-2101 through 16-2104,"
7. Page 6, line 7.
Following: "45-113,"
Insert: "and"
Following: "52-111,"
Strike: "and 52-213,"

And As Amended
Do Pass

P.A.

Date 1/8/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

COMMITTEE

VISITORS' REGISTER

DATE 4/8/79

(check one)

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Judiciary

COMMITTEE

BILL _____

VISITORS' REGISTER

DATE 1/8/78

Please note bill no.

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 170	reference to a title, chapter part, section etc of the MCA is a reference	1/15	Kvaalen	Thursday 18th	do pass amended	1/18
HB 172	open blanket primaries	1/15	Keyser	Thursday 18th	do pass amended	1/19
SB 4	relating to mortgages, pledges, liens, etc.	1/15	Galt	Thursday 18th	concurrent-amended consent cal.	1/24
SB 25	relating to alcoholic beverages	1/15	Galt	Thursday 18th	concurrent in	1/19
HB 182	relating to property	1/16	Marks	Friday 19th	do pass	1/19
HB 183	relating to public contracts	1/16	Marks	Friday 19th	do pass-amended	1/22

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 18, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Thursday, January 18. All members were present except Representatives Day, Holmes, Iverson and Roth, all excused.

Bills scheduled for hearing were House Bills 148, 170, 167, 165, 172 and Senate Bills 4 and 25.

HOUSE BILL NO. 148: Representative Rosenthal. This bill was introduced at the request of the Department of Social and Rehabilitation Services. This bill would revise and clarify the investigatory duties of the county welfare department concerning abused, neglected, or dependent children. It mandates for an investigation for the parent or guardian to make payments rather than just order them to do so. It also mandates the parent to make appropriate contributions in paying for the placement of children in a foster home.

NORMA VESTRE: This bill is designed to strengthen present laws to relieve the state of some of the cost of foster care. It would be concerned only with the cases where children are temporarily placed in foster care. About 60% are temporarily placed. It would give the SRS guidelines to follow.

There were no other proponents and no opponents.

REPRESENTATIVE ROSENTHAL: I feel it will cut down on the voluntary placements, maybe make them think twice before they give up their child.

REPRESENTATIVE DAILY: Questioned whether it would cover children coming out of institutions.

REPRESENTATIVE KEEDY: Questioned the section on financial statements and about voluntary placement.

With no other questions and no further discussion the hearing closed on HB 148.

HOUSE BILL NO. 172: Representative Keyser. This is just a small little bill that does a lot of things. It deals with the primary election. The reason for the bill, was, that during my travels campaigning people asked me, "why do I have to vote for someone in the primary, and designate a party choice. I said I would look into it. I have done quite a bit of research on the Washington and Alaskan laws. This bill is based primarily on Washington law. I feel that a person in the primary should not be forced to pick a party. He went through the bill and explained the conduct of

There was no discussion and no questions and the hearing closed on House Bill 170.

SENATE BILL NO. 4:

Senator Galt introduced Dave Cogley of the Legislative Counsel. A number of changes were made in the Senate. On line 8, it seems to equate the dollar amount to 60 days labor. Also, it should be right of redemption and right of foreclosure. He went on to explain some of the laws that will not be included in the code.

Representatives Roth and Iverson came in.

There was general discussion about changing the term, execution debtor and mortgage debtor. Mr. Cogley explained that execution debtor does include mortgage debtor.

The question was raised as to the meaning of the word "agister" and he explained that it is a person who has charge of another persons property.

There was no other discussion and the hearing closed on Senate Bill 4.

SENATE BILL NO. 25:

Senator Galt introduced Dave Cogley who went through the bill and explained it. There was some discussion about the minor changes in the bill. The bill revises and clarifies the laws relating to alcohol and tobacco.

The hearing closed on Senate Bill 25.

HOUSE BILL NO. 167:

Representative Kvaalen introduced Randy McDonald who said this bill was introduced to revise and clarify the law relating to the family. He went through the bill and pointed out the places that had been clarified to make it more clear.

There was no discussion and the hearing closed on House Bill 167.

The meeting adjourned at 9:05 a.m. and the committee went into executive session.


John P. Scully, Chairman

Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 19, 1979

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The executive session was called to order by Chairman Scully following the regular meeting at 9:40 a.m. in Room 436 on Friday, January 19, 1979. All members were present with the exception of Representative Holmes, excused because of illness.

HOUSE BILL NO. 184:

Representative Keedy offered an amendment and explained his reasoning for it.

On page 4, line 5, strike sub-section (2) in its entirety. Insert, "If the court grants without amendment a petition filed alleging abuse, neglect or dependency for the purpose of obtaining permanent custody of a child with the right to consent to adoption the court shall make no order requiring the parent or guardian to pay any of the costs thereof." A discussion followed as to whether this would apply if they were taking the child away to a permanent situation, or in what situation it would apply. The motion carried with the vote unanimous.

Representative Rosenthal passed out copies of amendments prepared by the social services. Mr. Scully explained the amendments and what effect they would have. Then followed general discussion and questions about the financial burden as applied in the bill and the voluntary and involuntary placements. Feeling was divided as to what the intent of the bill was.

Representative Scully appointed a sub-committee to study the bill, meet with witnesses and gather more facts and present it to the full committee on Tuesday, the 23rd. Sub-committee members appointed are Representative Keyser, Chairman, and Representatives Keedy, Daily, and Rosenthal. Further action will be taken at that time.

HOUSE BILL NO. 172:

Representative Keyser moved to amend Page 4, following line 12, the addition of a repealer section, which had been inadvertently left off the bill. (attached) The motion carried with the vote unanimous.

Representative Keyser moved "do pass as amended". Representative Daily gave his objections to the bill, as did Representatives Teague, Day, and Kemmis. Talking in favor of the bill was Representatives Uhde, Keyser and Seifert. Most of the discussion centered around whether or not the cross-over vote would or could destroy the two party system.

Representative Scully told the committee about a phone call he had had concerning the Big Horn River and the possibility of its use for a coal slurry pipeline. He and Representative Day explained to the members about the water policy on the Yellowstone, what was included, etc.

The question was called on the motion "do pass as amended". The motion carried with a roll call vote of 11 to 6 and 1 abstaining. Yes: Anderson, Conroy, Curtiss, Iverson, Keedy, Keyser, Lory, Roth, Seifert, Uhde, Scully. No: Daily, Day, Eudaily, Kemmis, Pavlovich, Rosenthal and abstaining was Representative Teague. Representative Holmes was excused, because of illness.

SENATE BILL NO. 4: Representative Lory moved "do pass". Representative Seifert moved an amendment to page 4 lines 5 through 9, to change the count of the animals as follows "4 horses, 8 cows, 12 hogs, 100 fowl, 1 lamb, 2 turtle doves and a partridge in a pear tree." The motion to amend carried with the following Representatives voting "no", Curtiss, Lory, Rosenthal and Roth.

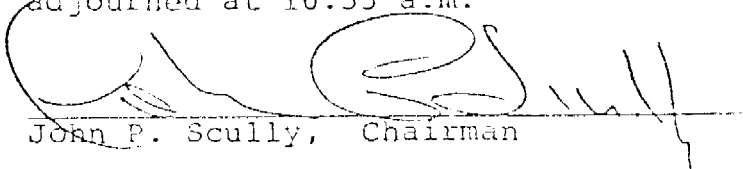
Representative Eudaily moved "do pass as amended". Discussion centered around mortgagor and mortgagee as amended by the Senate. The general feeling was that it could be interpreted two ways and it would be necessary for the committee to determine what was meant by the change. Larry Weinberg will check the section. He said it might pertain to the Bannock amendment, which was so old that it was not even dated.

Representative Day moved to amend page 5, line 16, strike "livery". After an explanation from Mr. Weinberg he withdrew the motion. It was decided to pass Senate Bill No. 4 for the day, in order to have more information about the section in question.

SENATE BILL NO. 25: Representative Seifert moved "do pass". The motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 182: Discussion about line 14, did the committee wish to add additional language. It was decided not. Representative Keyser moved "do pass". The motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 183: Will be held until Monday. The meeting adjourned at 10:55 a.m.


John P. Scully, Chairman

JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 22, 1979

The Judiciary Committee went into executive session following the regular meeting on Monday January 22, 1979 at 9:00 a.m. in Room 436 of the Capitol Building. The Chairman called the meeting to order. All members were present except Representatives Holmes and Anderson, excused.

HOUSE BILL NO. 119: The bill was referred back to committee from the 2nd reading.

REPRESENTATIVE ROTH: I thought there should be a little more delineation in requests from the 19 departments so we know what they want from the legislature. After some discussion Representative Roth said that she was talking about every state agency must prepare a statement of intent. I feel there are far too many requests by these 19 state agencies.

Some discussion about the meaning of intent

Representative Kemmis moved to amend page 2, lines 6 and 7 by striking the new language. The motion carried with the vote unanimous.

Representative Kemmis moved to amend page 1, line 24, strike "legislature's" and insert "agencies". The motion carried with the vote unanimous.

Representative Lory moved to amend page 2, paragraph 2, be changed to section 3, and renumber. The motion carried with the vote unanimous.

Representatives Daily and Pavlovich came in. After quite lengthy discussion Representative Lory withdrew his motion.

Representative Keedy moved to amend page 1, line 22, strike "statutes enacted" and insert "bills introduced". The motion carried with the vote unanimous.

Representative Keedy moved to amend the title, line 5, strike "enacted" and to insert "introduced". The motion carried with the vote unanimous.

Representative Eudaily moved to amend Page 1, line 25, strike "statute" and insert "bill". The motion carried with the vote unanimous.

Representative Roth moved "do pass as amended". The motion carried with the vote unanimous. Representative Sully commented that the agency

intent will become legislative history unless it is altered each time by the committee. (copy of all amendments attached)

SENATE BILL NO. 4: Larry Weinberg will check further another section in the bill, 71-1-211.

HOUSE BILL NO. 183: Discussion about a possible amendment for a correction that should be made. Representative Lory moved to amend (attached) and the motion carried with the vote unanimous.

Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 185: Representative Eudaily moved "do pass" and the motion carried with the vote unanimous. Representative Lory moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

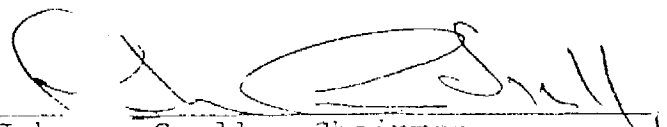
There was general discussion by various members of the committee as to the fact that they do not like the consent calendar and that it had a tendency to slow proceedings rather than expedite them as it was intended.

Representative Day moved that the Judiciary Committee bills should come off the consent calendar if the sponsor is not there to defend the bill. The motion carried with the vote unanimous.

HOUSE BILL NO. 194: There was much discussion about the definition of affinity and consanguinity as stated in the bill. Larry Weinberg will check and bring before the committee before further action is taken.

HOUSE BILL NO. 224: Representative Conroy moved "do pass." There was discussion about subsection (3) and whether or not it should be there. The question was called and the motion passed with the vote unanimous. Representative Conroy moved that the bill be placed on the consent calendar and the vote was unanimous to do so with the exception of Representative Lory. It will not go to the consent calendar. Representative Lory withdrew his vote of "no". It will go to the consent calendar.

The meeting adjourned at 9:50 so that members could attend the joint hearing on Senate Bill #65.


John Scully, Chairman

JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 24, 1979

Following the regular meeting the committee went into executive session and took action on the following bills. The meeting was called to order by Chairman Scully at 9:00 a.m. in Room 436 on Wednesday, January 24, 1979. All members were present.

HOUSE BILL NO. 148: Representative Keyser reported to the full committee the findings of the sub-committee and offered their recommendation. (copy attached) Representative Keyser moved the adoption of the committee recommendation and the motion carried with the vote unanimous.

Representative Keyser moved to table the bill, and Larry Weinburg will prepare a committee bill. The motion carried with the vote unanimous.

SENATE BILL NO. 4: Mr. Weinburg reported to the committee on research he had been doing. The history did not give much information. He proposed a series of amendments.

Representative Kemmis moved to strike "satisfaction" and insert "discharge and release" wherever it appeared in the bill. The motion carried with the vote unanimous.

Representative Kemmis moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried since the vote was unanimous. The bill will go to the consent calendar.

HOUSE BILL NO. 184: Representative Kemmis reminded the committee that this was the bill that revises the criminal procedure, both search a person and seize a person, which wording bothered him a great deal. He moved several clean-up amendments wherever the words "persons to be seized" appear. The motion carried with the vote unanimous.

Representative Iverson moved "do pass as amended" and the motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous. It will go to the consent calendar.

HOUSE BILL NO. 194: Mr. Weinberg reported on his investigation of affinity (about the 1st degree). Representative Scully explained about the relationships as determined in sub-section (2). It was suggested that on page 8, the section be repealed starting on line 18 and renumber. Representative Keyser moved this amendment and the motion carried with the vote unanimous.

STANDING COMMITTEE REPORT

January 24,

1979

SPEAKER:

We, your committee on Judiciary

having had under consideration

SENATE

Bill No. 4

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MORTGAGES, PLEDGES, AND LIENS; AMENDING SECTIONS 71-1-213, 71-1-229, 71-3-401, 71-3-1003, AND 71-3-1201, MCA; AND REPEALING SECTIONS 16-2101-THROUGH-16-2104, 45-1112, 45-1113, AND 52-111, AND 52-213, R.C.M. 1947."

Respectfully report as follows: That We unanimously recommend that SENATE Bill No. 4

Third reading copy, be amended as follows:

1. Page 2, line 14.

Following: "may"

Strike: "satisfy"

Insert: "discharge or release"

2. Page 2, line 16.

Following: line 15

Strike: "satisfaction"

Insert: "discharge or release"

3. Page 2, line 22.

Following: "with the"

Strike: "satisfaction"

Insert: "discharge or release"

XXXXXX

(Continued)

SENATE BILL NO. 4

Page 2

4. Page 2, line 24.

Following: "the"

Strike: "satisfaction"

Insert: "discharge or release"

5. Page 2, line 25.

Following: "was"

Strike: "satisfied"

Insert: "discharged or released"

6. Page 4, line 5.

Following: "months for"

Strike: "1 horse, 2"

Insert: "2 horses, 8"

7. Page 4, line 6.

Following: "calves,"

Strike: "4"

Insert: "12"

Following: "hogs, and"

Strike: "50"

Insert: "100"

Following: "fowls,"

Insert: "; 1 lamb, 2 turtle doves, and a partridge in a pear tree;

AND AS AMENDED BE CONCURRED IN

A motion was made and passed unanimously to place
SENATE BILL NO. 4 on the CONSENT CALENDAR.

SENATE BILL NO. 4

INTRODUCED BY GALT

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MORTGAGES, PLEDGES, AND LIENS; AMENDING SECTIONS 71-1-213, 71-1-229, 71-3-401, 71-3-1003, AND 71-3-1201, MCA; AND REPEALING SECTIONS ~~16-2101~~ THROUGH ~~16-2104~~ 45-1112, 45-1113, ~~AND~~ 52-111, ~~AND~~ 52-213~~7~~ R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-213, MCA, is amended to read:

"71-1-213. Discharge or release by other than mortgagee. (1) When ~~such~~ if the discharge or release is made by the personal representative of the mortgagee, it ~~shall~~ must be accompanied by a certified copy of his authority unless such authority is already of record in the office of the county clerk and recorder where ~~such the~~ mortgage is recorded.

(2) ~~in-case-such~~ if the discharge or release is made by an assignee, it must be accompanied by the assignment of ~~such the~~ mortgage, unless ~~such the~~ assignment is already of record in the office of the county clerk and recorder where ~~such the~~ mortgage is recorded.

(3) ~~in-the-event-that-such~~ if the discharge or release is executed by an attorney in fact, ~~such the~~ discharge or release ~~shall~~ must have attached to it the power of attorney under which it is made unless ~~such the~~ power of attorney is already of record in the office of the county clerk and recorder where ~~such the~~ mortgage is recorded.

(4) When ~~such~~ if the discharge or release is executed by the heir or heirs of the mortgagee, ~~such the~~ discharge or release must be accompanied by a certified copy of an order or decree of the ~~a~~ court of competent jurisdiction showing such authority unless ~~such the~~ order or decree is already of record in the office of the county clerk and recorder where ~~such the~~ mortgage is recorded.

(5) Foreign administrators and executors may ~~satisfy~~ DISCHARGE OR RELEASE mortgages of record in Montana provided ~~--that~~ if the satisfaction DISCHARGE OR RELEASE of mortgages be ~~is~~ accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be presented and recorded ~~in--connection~~ with the ~~satisfaction~~ DISCHARGE OR RELEASE of the mortgage. When ~~so presented and recorded, they shall have the satisfaction~~ DISCHARGE OR RELEASE has the same force and effect as if the

1 mortgage was satisfied ~~DISCHARGED OR RELEASED~~ by the
2 mortgagee mortgagor MORTGAGEE."

3 Section 2. Section 71-1-229, MCA, is amended to read:

4 "71-1-229. Possession of lands prior to foreclosure
5 upon default and during period of redemption. The purchaser
6 of lands at mortgage foreclosure is not entitled to the
7 possession thereof as against the execution mortgage
8 EXECUTION debtor during the period of redemption allowed by
9 law while said--execution the mortgage EXECUTION debtor
10 personally occupies the land as a home for himself and his
11 family. It shall-be is unlawful to insert in any mortgage of
12 real estate any provision or-language intended to constitute
13 a waiver by the owner of real estate personally occupying
14 land as a home for himself and family of the provision of
15 this section or any provision or-language intended to give
16 the mortgagee possession of the land or premises prior to
17 foreclosure upon default of tax, principal, or interest
18 payments. The intention hereof being is to insure to such
19 owner the possession of his land prior to foreclosure and
20 during the year of redemption."

21 Section 3. Section 71-3-401, MCA, is amended to read:

22 "71-3-401. Who may have lien -- priority. (1) Any
23 person who performs services for another in the capacity of
24 a farm or ranch laborer shall-have has a lien on all crops
25 of every kind grown, raised, or harvested by the person for

1 whom the services were performed during said that time, as
2 security for the payment of any wages due or owing to such
3 persons for services so performed.

4 (2) Said the lien shall-have has priority over all
5 other liens, chattel mortgages, or encumbrances except,
6 however, feed sufficient for 3 months for 1--horse--2 2
7 HORSES--8 1 HORSE, 2 cows and their calves, 4 12 4 hogs, and
8 50 100 50 domestic fowls--1-LAMB--2-THIRTY-DOVES--AND-A
9 PARTIAL--IN-A-PEAR-TREE+ and seed grain and threshers'
10 liens. The wages for which a lien may be claimed shall may
11 not be in excess of \$100 \$1,000 or for a period of time
12 exceeding 60 days next preceding the date of filing the
13 lien. In case any such person without cause quits his
14 employment before the expiration of the time for which he is
15 employed, then he shall is not be entitled to a lien as
16 herein provided.

17 (3) If several persons have or obtain liens under the
18 provisions of this part against property of the same
19 employer, they shall have no priority among themselves but
20 all must be paid pro rata from the proceeds of any
21 foreclosure sale according to the provisions of this part."

22 Section 4. Section 71-3-1003, MCA, is amended to read:

23 "71-3-1003. Lien for labor or supplies furnished for
24 contractor. Any person, partnership, or corporation which
25 shall-furnish-such that furnishes materials or services as a

1 subcontractor or to a contractor or a subcontractor or any
 2 person who ~~shall--perform--such~~ performs labor under a
 3 subcontractor with a contractor or who, as an artisan or day
 4 laborer in the employ of such contractor or subcontractor,
 5 ~~shall-perform~~ performs any such labor shall-have has a lien
 6 upon all the property upon which the lien of an original
 7 contractor may attach to the same extent as an original
 8 contractor, and the lien provided for in this section shall
 9 further-extend-and-attach attaches to all materials and
 10 fixtures owned by such original contractor or subcontractor
 11 to-or for whom the labor is performed or material materials
 12 or services furnished and used or employed or furnished to
 13 be used or employed in the drilling or operating of such oil
 14 and gas wells or in the construction of such pipeline."

15 Section 5. Section 71-3-1201, MCA, is amended to read:
 16 "71-3-1201. Who may have lien. (1) ~~A If there is an~~
 17 ~~express or implied contract for keeping, feeding, herding,~~
 18 ~~pasturing, or ranching stock, a~~ ranchman, farmer, agister,
 19 herder, hotelkeeper, livery, boarding, or feed stablekeeper
 20 to whom any horses, mules, cattle, sheep, hogs, or other
 21 stock are entrusted,--and--there-is-a-contract,--express-or
 22 ~~implied,--for-their-keeping,--feeding,--herding,--pasturing,--or~~
 23 ~~ranching,~~ has a lien upon such stock for the amount due for
 24 keeping, feeding, herding, pasturing, or ranching the same
 25 stock and is--authorized--to may retain possession thereof

1 until the sum due is paid.

2 (2) Every person who, while lawfully in possession of
 3 an article of personal property, renders any service to the
 4 owner or lawful claimant thereof by labor or skill employed
 5 for the making, repairing, protection, improvement,
 6 safekeeping, or carriage thereof has a special lien thereon,
 7 dependent on possession, for the compensation, if any, which
 8 ~~that~~ is due to him from the owner or lawful claimant for
 9 such service and for material, if any, furnished in
 10 connection therewith."

11 Section 6. Repealer. Sections ~~16-2101-through-16-2104,~~
 12 45-1112, 45-1113, AND 52-111, end-52-213, R.C.M. 1947, are
 13 repealed.

-End-